

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

TOBIN E. JACKS, M.D., RESPONDENT

FILE NO. 02-06-451

AMENDED ORDER

Date: August 28, 2015.

On August 28, 2015, the Board concluded that Respondent has fully complied with the terms of the Reinstatement Decision dated April 28, 2008, particularly his successful completion of Board-approved substance abuse treatment and monitoring, and the Board voted to amend the terms of the Reinstatement Decision.

THEREFORE IT IS HEREBY ORDERED that effective August 28, 2015, the Reinstatement Decision dated April 28, 2008, shall be amended as follows:

The following provisions are hereby deleted from the Reinstatement Decision:

- b) **Alcohol Prohibition:** Respondent shall not consume alcohol.
- c) **Controlled or Prescription Drug Consumption:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform all treating health care providers of his history of substance abuse prior to receiving any prescription drug.

- d) **Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide witnessed urine or blood specimens on a weekly basis. The Board shall approve all witnesses. The specimens shall be screened for alcohol and drugs. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.
- e) **Substance Abuse Meetings:** Respondent shall attend four meetings per week of Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or a similar organization that is approved by the Board. Respondent shall document his attendance in a written quarterly report to the Board. The report shall state the date, time, and location of each meeting. Each meeting shall be verified by a written signature or initials by another person in attendance at the meeting.
- f) **Substance Abuse Treatment:** Respondent shall continue Board-approved substance abuse treatment.
 - (1) The substance abuse counselor shall submit written reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
 - (2) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
 - (3) Respondent shall attend treatment as recommended by his counselor and follow all recommendations. Respondent's treatment shall include at least one weekly group session and two monthly individual sessions

Respondent must continue to fully comply with the following terms and conditions:

1. **PROHIBITION - CONTROLLED SUBSTANCES:** Respondent is prohibited from prescribing, administering or dispensing controlled substances.
2. **BOARD - APPROVED PRACTICE SETTING:** Respondent shall only be permitted to practice medicine under his Iowa medical license within the IDOC under the terms and conditions established in this Order. Respondent shall not engage in any aspect of the practice medicine under his Iowa medical license in any other practice setting.

3. **INDEFINITE PROBATION:** Respondent is on **indefinite probation** subject to the following terms and conditions:

- a) **Monitoring Program:** Respondent shall contact the Shantel Billington, Compliance Monitor, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a Board monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- g) **Written Practice Plan:** Respondent shall submit for Board approval a written practice plan describing his duties for IDOC, and the structure that will be put in place to ensure continued compliance with the terms and conditions established by the Board. The practice plan shall be consistent with the information provided by IDOC and Respondent during the hearing on Respondent's application for reinstatement. The practice plan shall be signed by Respondent and Dr. O'Brian, IDOC, Medical Director, or Dr. O'Brian's designee or successor. The Board shall approve the practice plan prior to Respondent beginning work at the IDOC.
- h) **Worksite Monitor:** Respondent shall submit for approval the name of a physician who regularly observes and/or supervises him at all practice locations to serve as his worksite monitor. The Board shall provide a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they agree to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, substandard treatment, or a violation of the terms of this Order. The monitor shall agree to submit quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- i) **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all of the terms and conditions of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.

- j) **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC .
- k) **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required by this Order. The monitoring fee shall be sent to: Shantel Billington, Monitoring Coordinator, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
- l) **Costs:** Respondent is responsible for all costs relating to the terms and conditions established in this Order.



Hamed H. Tewfik, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

August 28, 2015

Date

BEFORE THE IOWA BOARD OF MEDICINE

In the Matter of the Statement of	:	CASE NO. 02-06-451
Charges Against	:	
	:	
TOBIN E. JACKS, M.D.,	:	RESPONDENT'S COMPLIANCE
	:	REPORT AND REINSTATEMENT
Respondent.	:	PRACTICE AND MONITORING PLAN

COMES NOW Respondent Tobin E. Jacks, M.D. (hereinafter "Jacks"), and hereby states to the Iowa Board of Medicine (hereinafter "the Board") that:

BACKGROUND

1. On February 7, 2007, a panel of the Board issued a proposed decision. It was not appealed.

2. Therefore, on March 9, 2007, the Board issued a final order suspending Jacks' medical license for six months.

3. On December 24, 2007, Jacks filed a formal application for reinstatement.

4. A hearing on Jacks' formal application for the reinstatement of his medical license was held on March 12, 2008. A reinstatement decision was issued by the Board on April 28, 2008. The appeal is waived by the signature of Jacks on this practice plan.

5. Jacks has not practiced medicine since April 2006.

6. Jacks has successfully completed all aspects of his treatment and rehabilitation programs, with no relapses, of any kind, for two years.

7. The terms set out in paragraph nos. 5a-5d of the February 7, 2007, order of the Board have been complied with, as required, prior to reinstatement.

COMPLIANCE REPORT

8. Jacks is in full compliance with all of the counseling, monitoring, and reporting requirements.

9. Jacks' counselor appeared at the reinstatement hearing and assured the Board that Jacks is safe to return to practice.

10. Jacks' prospective employer and proposed practice monitor appeared at the reinstatement hearing to describe Jacks' employment arrangement in detail. The proposed employment has been accepted by the Board in its April 28, 2008 order on reinstatement.

11. Richard L. Hauser, M.D. (hereinafter "Hauser"), of Coralville, Iowa, Jacks' Board-approved aftercare counselor and treatment plan monitor, continues to prescribe Naloxone for Jacks. Hauser continues to appropriately report to the Board and will continue to do so as required by the April 28, 2008 order of the Board.

12. Jacks has abstained from the use of any alcohol, drugs, prescription medications, or other substances since April 2006.

13. Jacks is continuing with his participation in AA or other drug counseling groups, as required by prior orders of the Board and will comply with all requirements set forth in the April 28, 2008 order by the Board.

REINSTATEMENT PRACTICE AND MONITORING PLAN

14. Edward O'Brien, M.D. (hereinafter "O'Brien"), Chief Medical Officer for the Iowa Department of Corrections, appeared during Jacks' reinstatement hearing on March 12, 2008, to answer any questions that might be posed by the Board and is proposed as an appropriate **worksite monitor** for Jacks upon reinstatement.

15. Upon reinstatement, Jacks will be employed as a medical provider with the Iowa Department of Corrections. Jacks' position consists of completing physical

examinations of newly incarcerated offenders, providing ongoing care and treatment for identified chronic conditions of institutionalized patients, including treatment of acute illnesses, and reviewing laboratory reports, electrocardiograms, and chest X rays.

16. Jacks' primary responsibility will be the development of treatment plans for chronic conditions for the duration of an offender's incarceration with the Iowa Department of Corrections.

17. O'Brien, the proposed worksite monitor, has previously been approved for the monitoring of physicians with license restrictions imposed by the Board. He has agreed to serve, if approved by the Board, as Jacks' worksite monitor, and has testified to the Board that it is his opinion that the environment proposed for Jacks will give Jacks an excellent opportunity to safely transition into the role of a responsible health care provider.

18. Initially, the position will provide for approximately 20 hours of work each week, with development into a 40-hour, full-time, employment position. Jacks will not be performing any medical work or other employment outside the Iowa Department of Corrections, as directed by the Board in its reinstatement order.

19. Jacks will have the benefit of a complete support system through the affiliation of The University of Iowa Hospitals and Clinics with the facility in Oakdale, Iowa, as well as the support of two additional physicians, two physician assistants, and a nurse practitioner at the Oakdale facility.

20. Jacks will continue attending at least four 12-step meetings each week, as required by prior orders of the Board, and as required by the aftercare plan administered by his primary aftercare counselor, Hauser. Jacks will continue with his weekly group sessions and his monthly, individual, aftercare sessions with Hauser.

21. O'Brien has assured the Board that any limitations or restrictions, with respect to matters involving prescription medications, will be strictly enforced by O'Brien, as Jacks' worksite monitor. The prior order of the Board specifically states that Jacks will be prohibited from prescribing, administering, or dispensing controlled substances for a period of at least one year subsequent to the termination of his suspension and the commencement of a period of probation. This restriction will be strictly adhered to in the implementation of this practice plan. The further indefinite prohibition in the current order will be complied until modified by further order of the Board.

22. Although O'Brien, if approved by the Board, will act as Jacks' onsite worksite monitor, Jacks will also be supervised by Dr. Sarshwat.

23. All activities involved in Jacks' employment arrangement are "transparent." In other words, Jacks' employment activities involve a level of accountability and visibility rarely involved in other forms of employment. This is a result of the very nature of the work and the environment involved in this important employment position.

24. These transparency and visibility arrangements must be in place for the safety and security of medical personnel at the Oakdale facility, but also have the added benefit of ongoing worksite supervision and monitoring not otherwise normally available in a typical workplace setting.

25. The prohibition set forth in the February 7, 2007, order of the Board was a broad-based prohibition with respect to the prescribing of controlled substances. Nevertheless, when Jacks might be required to order medications, even with respect to non-controlled substances or medications, Jacks will never physically handle any substances or medications himself, nor have any availability to those items.

26. Jacks is not required to provide any equipment or anything else with respect to the conduct of his employment responsibilities. He will be required to type his own progress notes, but those will be subject to appropriate review and supervision within the organizational structure.

27. O'Brien and Jacks have cooperated to give every assurance possible and necessary to the Board that this worksite plan is an appropriate re-entry into practice program for Jacks.

Respectfully submitted,

Michael M. Sellers, Attorney-at-Law (AT0007058)
Sellers Law Office
One Corporate Place
1501 - 42nd Street, Suite 380
West Des Moines, Iowa 50266-1075
Telephone: (515) 221-0111
Fax: (515) 221-2702
Email: sellers@sellersoffice.com

ATTORNEY FOR RESPONDENT

Tobin E. Jacks, M.D., Respondent

Edward O'Brien, M.D.
Chief Medical Officer
Iowa Department of Corrections
Practice Monitor for Respondent

ORIGINAL FILED

Copy to:

Iowa Assistant Attorney General
Theresa O'Connell Weeg
Iowa Department of Justice
Hoover State Office Building, Second Floor
1305 East Walnut
Des Moines, Iowa 50319

Kent M. Nebel, J.D., Director of Legal Affairs
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309-4686

ComplianceMonitoringPlan.doc
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BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE)	FILE NO. 02-06-451
STATEMENT OF CHARGES)	DIA NO. 08DPHMB006
AGAINST:)	
)	
TOBIN E JACKS, M.D.,)	
)	REINSTATEMENT DECISION
Respondent.)	

To: Tobin E. Jacks, M.D.

Date: April 28, 2008.

On March 12, 2008, the Iowa Board of Medicine (the Board) held a hearing regarding Respondent's application for reinstatement. The following Board members were present: Yasyn Lee, M.D., Siroos Shirazi, M.D., Colleen Kennedy, M.D., Rod Zeitler, M.D., and Sally Schroeder, and Tom Drew, public members. Jeffrey Farrell, an administrative law judge from the Department of Inspections and Appeals, assisted the Board. Assistant Attorney General Theresa Weeg represented the public interest. Attorney Michael Sellers represented Respondent. The hearing was closed to the public at the election of the licensee.¹

After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate. See Iowa Code section 21.5(1)(f). The Board directed the administrative law judge to prepare the decision in accordance with its deliberations.

THE RECORD

The State's exhibits 1-17 were admitted. Respondent submitted a large appeal packet that was jointly admitted as exhibit A. Respondent called Dr. Richard Hauser and Dr. Ed O'Brian. Respondent testified on his own behalf.

FINDINGS OF FACT

History of disciplinary action: Respondent has a long history of drug abuse and disciplinary actions before the Board. The events are set out in detail in a panel decision filed on February 6, 2007, and need not be repeated verbatim here. The Board approved the panel decision on March 9, 2007. There was no appeal, and the decision is final. (Exhibit 15-16).

¹ See 653 IAC 24.4(4) (citing Iowa Code section 272C.6(1)). Respondent initially requested an open hearing, but later requested a closed hearing.

The Board has filed a total of four statements of charges against Respondent. The actions were filed in 1987, 1995, 2004, and 2006. All four statements of charges claim violations of the Board's regulations concerning controlled substances. The Board imposed discipline in each case. In the first case, the Board placed Respondent on probation for five years subject to a number of conditions that Respondent was required to meet to maintain his license. In the second case, the Board imposed a second five-year probation period, and imposed a new set of conditions. In the third case, the Board issued a citation, imposed a \$2,000 fine, and warned Respondent that any future violation may result in the suspension or revocation of his medical license. (Exhibits 1-11, 15).

After hearing the evidence introduced during the fourth statement of charges, the Board determined that stronger disciplinary action was necessary. The February 6, 2007 order, as adopted by the full Board, set forth a number of sanctions and conditions, including indefinite suspension of Respondent's Iowa medical license and a prohibition against prescribing, administering or dispensing any controlled substances. The Board also issued a citation and warning and \$5,000 civil penalty, and established an indefinite probation following any future reinstatement. The Board prohibited Respondent from applying for reinstatement for at least six months from the date of the Board's approval of the panel decision. (Exhibits 15-16).

Evidence relative to Respondent's reinstatement request: Respondent has received treatment for his drug addictions from Dr. Richard Hauser. Dr. Hauser has worked in the arena of addictive medicine since 1980. Dr. Hauser has provided treatment for doctors upon the request of the Board and the Iowa Physician Health Program (IPHP). (Hauser testimony).

Dr. Hauser began seeing Respondent in October of 2006. Dr. Hauser has had 84 contacts with Respondent over the past 17 months in individual or group treatment. Dr. Hauser testified that he has not seen any sign that Respondent has relapsed. Dr. Hauser offered a good prognosis for Respondent's opportunity to succeed with his recovery. He has a good structure around him to prevent a relapse. Dr. Hauser testified that he does not have any reservations about reinstating Respondent's license to practice at this time, assuming Respondent follows a very monitored program. Dr. Hauser testified that Respondent should not be allowed to prescribe controlled substances. (Hauser testimony).

Dr. Ed O'Brian is the medical director for the Iowa Department of Corrections (IDOC). Dr. O'Brian supervises nine doctors who provide medical care for prisoners in the state correctional system. Respondent has applied to work at DOC. Dr. O'Brian is willing to hire Respondent on a part-time temporary basis, if Respondent is reinstated by the Board. Dr. O'Brian stated that DOC offers a unique situation for a person like Respondent because there is a high degree of structure and transparency in the position. Respondent

could work without having any access to drugs, and Respondent would not be placed in any compromising situations with patients in the prison. (O'Brian testimony).

Respondent testified that his recovery has been aided by his separation from the medical profession. He has participated in two treatment programs. He has used the time away from the profession to focus on recovery. Respondent testified to a change in attitude after losing his license, job, and marriage. He stated he used to consider the Board's orders and IPHP directives to be nuisances; he now understands that they are needed. Respondent has performed some work outside the medical profession, and is taking classes to obtain an MBA degree. He testified that his recovery is "one hundred percent effective." (Respondent testimony).

Respondent testified that he would like to return to practicing after spending time away from the profession. Respondent believes that the IDOC job is tailor-made for him because it is highly structured. (Respondent testimony).

CONCLUSIONS OF LAW

Any person whose license has been suspended, revoked or placed on probation may apply to the Board for reinstatement. Iowa Code section 148.9. The Board may hold a hearing on the application, order reinstatement, and impose terms and conditions on the applicant.

An application for reinstatement shall allege facts which, if established, is sufficient to: 1) enable the board to determine that the basis for the revocation or suspension of the respondent's license no longer exists, and 2) that it will be in the public interest for the license to be reinstated. 653 IAC 26.1(3). The applicant has the burden of proof to establish each element.

The Board remains concerned about Respondent's ability to practice medicine without relapse. Respondent's misconduct has spanned more than 20 years. The Board has exercised considerable restraint and patience with Respondent. Respondent has relapsed on each occasion. Respondent has proven that he can refrain from illegal acts for a while, but has always fallen back into improper prescribing and use of controlled substances. The Board would be remiss of its responsibilities to the public if it did not take a guarded approach to considering this application for reinstatement.

Respondent has fully complied with the February 7, 2007 order. Dr. Hauser confirmed that Respondent has complied with treatment and done well. Dr. Hauser believes that Respondent could return to practice, as long as there is a sufficient structure. However, Respondent has been successful for long periods of time in the past. He met the terms of his probation for five years after the Board orders in 1987 and 1995. Neither served as

sufficient deterrence to prevent future violations. The Board hopes that Respondent now has the mindset and tools to avoid further violations in the future. However, the Board must question respondent's testimony at hearing that his recovery has been "one hundred percent effective." The Board would like to accept this statement as a guarantee, but Respondent's past history cannot be ignored.

Notwithstanding these concerns, the Board is willing to give Respondent an opportunity to take the job offer with IDOC, with the restriction that Respondent's license is limited to working for IDOC under the terms identified at the hearing. IDOC offers a truly unique and structured practice setting. Respondent will not have access to medications. He will be monitored at all times. He will not have the same opportunity, as part of a practice setting, to violate Board rules again. Additionally, the Board's decision meets the public interest of allowing an experienced doctor the opportunity to provide medical care for prisoners held by the State. As limited by this particular practice opportunity, the Board finds that the elements regarding reinstatement are met.

The Board makes clear that this decision does not apply to any practice outside of the IDOC job, as described by Dr. O'Brian and Respondent during the hearing. The Board is not confident that Respondent would succeed in a private practice setting or any other medical employment. Accordingly, this decision is solely limited to the IDOC employment outlined by Dr. O'Brian. Respondent's license is not reinstated to provide any medical care outside of his duties for IDOC.

DECISION AND ORDER

Respondent's application for reinstatement is granted, subject to the following terms and conditions:

1. **PROHIBITION - CONTROLLED SUBSTANCES:** Respondent is prohibited from prescribing, administering or dispensing controlled substances.
2. **BOARD - APPROVED PRACTICE SETTING:** Respondent shall only be permitted to practice medicine under his Iowa medical license within the IDOC under the terms and conditions established in this Order. Respondent shall not engage in any aspect of the practice medicine under his Iowa medical license in any other practice setting.
3. **INDEFINITE PROBATION:** Respondent's Iowa medical license shall be reinstated and he shall be placed on **indefinite probation** subject to the following terms and conditions:

- a) **Monitoring Program:** Respondent shall contact the Shantel Billington, Compliance Monitor, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-281-3654 to establish a Board monitoring program. Respondent shall fully comply with all requirements of the monitoring program.
- b) **Alcohol Prohibition:** Respondent shall not consume alcohol.
- c) **Controlled or Prescription Drug Consumption:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform all treating health care providers of his history of substance abuse prior to receiving any prescription drug.
- d) **Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide witnessed urine or blood specimens on a weekly basis. The Board shall approve all witnesses. The specimens shall be screened for alcohol and drugs. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.
- e) **Substance Abuse Meetings:** Respondent shall attend four meetings per week of Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or a similar organization that is approved by the Board. Respondent shall document his attendance in a written quarterly report to the Board. The report shall state the date, time, and location of each meeting. Each meeting shall be verified by a written signature or initials by another person in attendance at the meeting.
- f) **Substance Abuse Treatment:** Respondent shall continue Board-approved substance abuse treatment.
 - (1) The substance abuse counselor shall submit written reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.

- (2) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
 - (3) Respondent shall attend treatment as recommended by his counselor and follow all recommendations. Respondent's treatment shall include at least one weekly group session and two monthly individual sessions.
- g) **Written Practice Plan:** Respondent shall submit for Board approval a written practice plan describing his duties for IDOC, and the structure that will be put in place to ensure continued compliance with the terms and conditions established by the Board. The practice plan shall be consistent with the information provided by IDOC and Respondent during the hearing on Respondent's application for reinstatement. The practice plan shall be signed by Respondent and Dr. O'Brian, IDOC, Medical Director, or Dr. O'Brian's designee or successor. The Board shall approve the practice plan prior to Respondent beginning work at the IDOC.
- h) **Worksite Monitor:** Respondent shall submit for approval the name of a physician who regularly observes and/or supervises him at all practice locations to serve as his worksite monitor. The Board shall provide a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they agree to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, substandard treatment, or a violation of the terms of this Order. The monitor shall agree to submit quarterly reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.
- i) **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all of the terms and conditions of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
- j) **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC .

k) **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required by this Order. The monitoring fee shall be sent to: Shantel Billington, Monitoring Coordinator, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.

l) **Costs:** Respondent is responsible for all costs relating to the terms and conditions established in this Order.

4. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

5. In the event Respondent leaves Iowa to reside or practice medical outside the state, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside the state of Iowa will not apply to the duration of this Order.

6. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order the Board may initiate action to suspend or revoke the Respondent's Iowa medical license or to impose other license discipline as authorized in Iowa Code chapters 148 and 272 and 653 IAC 25.

7. This Order constitutes the resolution of a contested case proceeding.


8. By entering into this Order Respondent voluntarily waives any rights to a contested case hearing in this matter and he waives any objections to the terms of this Order.

9. Respondent voluntarily submits this Order to the Board for consideration.

10. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

11. The Board's approval of this Final Order shall constitute a **Final Order** of the Board.

Dated this 28th day of April, 2008.



Yasyn Lee, M.D., Chairperson
Iowa Board of Medicine

cc: Theresa O'Connell Weeg
Michael Sellers

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

TOBIN E. JACKS, M.D., RESPONDENT

File No. 02-06-451

ORDER RE: REQUEST FOR REINSTATEMENT

Date: November 28, 2007.

1. Respondent was issued Iowa medical license no. 26026 May 19, 1987.
2. Respondent's Iowa medical license is active and will next expire on March 1, 2009.
3. Respondent is an Iowa-licensed physician who formerly practiced family medicine in Knoxville, Iowa.
4. On August 31, 1987, the Board charged Respondent with the inability to practice medicine with reasonable skill and safety due to his excessive use of drugs.
5. On October 7, 1987, Respondent entered into an Informal Settlement with the Board to resolve the pending disciplinary charges. Under the terms of the Informal Settlement, Respondent was placed on probation for a period of five years subject to certain terms and conditions due to drug abuse.
6. On October 8, 1992, the Board terminated the terms of Respondent's probation.

7. On August 10, 1995, Respondent was again disciplined for the inability to practice medicine with reasonable skill and safety due to his excessive use of drugs. Respondent was again placed on probation for a period of five years subject to certain terms and conditions for drug abuse.

8. On June 1, 2000, the Board terminated the terms of Respondent's probation.

9. On numerous occasions between January 28, 2001, and October 24, 2001, Respondent inappropriately prescribed drugs to a co-worker who exhibited drug seeking behavior. Respondent failed to maintain appropriate medical records for the prescribing, failed to establish appropriate safeguards to prevent abuse, and failed to recognize the co-worker's drug seeking behavior. The co-worker later developed a serious drug abuse problem.

10. On September 2, 2004, the Board charged Respondent with diverting drugs he had prescribed for a co-worker, for his own use on numerous occasions in 2001.

11. On September 29, 2005, Respondent was issued a Citation and Warning for engaging in improper prescribing practices and diverting the drugs for his own use. He was ordered to complete a Board-approved course for prescribing controlled substances in the treatment of chronic pain and he was ordered to pay a \$2,000.

12. On or about March 8, 2002, Respondent entered into a Physician Health Contract with the Iowa Physician Health Program (IPHP) for substance abuse monitoring. Respondent violated the terms of his Physician Health Contract when he:

- A. Improperly diverted controlled substances intended for his patients for his own use on more than one occasion;

- B. Utilized urine from a patient and a member of his family to avoid detection of his use of controlled substances by a Board-approved drug screening program;
- C. Failed to have his urine drugs screens witnessed; and
- D. Enrolled in a non-approved drug treatment program for substance abuse relapse.

13. On June 9, 2006, the IPHP referred Respondent to the Board for disciplinary action for violating the terms of his IPHP Physician Health Contract.

14. On June 22, 2006, the Board charged Respondent with violating the terms of his IPHP Physician Health Contract when he diverting drugs intended for his patients for his own use and with utilizing urine from a patient and a family member to avoid detection of his drug abuse by the Board's drug screening program.

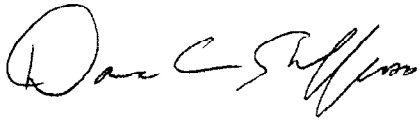
15. A hearing on the disciplinary charges was held before a panel of the Board on December 12, 2006.

16. On March 9, 2007, the Board issued a Final Order to resolve the disciplinary charges. The Board concluded that Respondent violated the terms of his IPHP Physician Health Contract and suspended Respondent's Iowa medical license for a minimum of six months.

17. Respondent recently requested reinstatement of his Iowa medical license.

18. On November 8, 2007, after careful consideration, the Board voted to **DENY** Respondent's request for reinstatement of his medical license. The Board noted Respondent's long history of substance abuse and his numerous violations of the monitoring requirements established by the Board.

THEREFORE IT IS HEREBY ORDERED that the Respondent's request for reinstatement on in this matter is hereby **DENIED**.



Dana Shaffer, D.O., Vice Chair
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

November 28, 2007

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

TOBIN E. JACKS, M.D., RESPONDENT

File No. 02-06-451

FINAL ORDER

Date: March 9, 2007.

1. The Board issued Respondent Iowa medical license no. 26026 on May 19, 1987.
2. Respondent's Iowa medical license is currently active.
3. On August 31, 1987, the Board filed formal disciplinary charges against Respondent for habitual intoxication or addiction to the use of drugs and the inability to practice medicine with reasonable skill and safety by reason of excessive use of drugs.
4. On October 7, 1987, Respondent was placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. Respondent completed the terms of his probation on October 8, 1992.
5. On August 10, 1995, the Board charged Respondent with the inability to practice medicine with reasonable skill and safety due to the excessive use of drugs and he

was again placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. Respondent completed the terms of his probation on June 1, 2000.

6. On September 2, 2004, the Board charged Respondent with inappropriately diverting controlled substances he had prescribed to a co-worker, for his own use on numerous occasions in 2001. On September 29, 2005, following a hearing before the Board, Respondent was issued a Citation and Warning for engaging in improper prescribing practices and diverting controlled drugs for his own use. He was ordered to complete a Board-approved prescribing course and he was ordered to pay a \$2,000 civil penalty.

7. Respondent violated the terms of the September 29, 2005, Order, when he:

- A. Failed to complete a Board-approved prescribing course; and he
- B. Failed to pay the \$2,000 civil penalty.

8. On or about March 8, 2002, Respondent entered into a contract with the Iowa Physician Health Program (IPHP) for substance abuse monitoring. Respondent violated the terms of his IPHP Physician Health Contract when he:

- A. Improperly diverted controlled substances from his patients for his own use;
- B. Utilized urine from a patient and a member of his family to avoid detection of his use of controlled substances;
- C. Failed to have his urine drugs screens properly witnessed; and
- D. Enrolled in a non-approved drug treatment program for substance abuse.

9. On June 9, 2006, the IPHP voted to refer Respondent to the Board for disciplinary action for violating the terms of his IPHP Physician Health Contract.

10. On June 22, 2006, the Board filed formal disciplinary charges against Respondent for habitual intoxication or addiction to the use of drugs or alcohol, violating a Board order and violating the terms and conditions of an IPHP Physician Health Contract. On December 12, 2006, a hearing was held before a panel of the Board.

11. On February 6, 2007, the panel issued a Proposed Decision of the Panel.

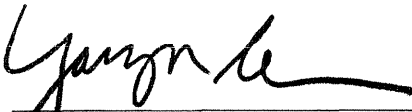
12. On February 7, 2007, a copy of the Proposed Decision of the Panel was delivered to counsel for the State of Iowa, Theresa O'Connell Weeg, Esq., Assistant Attorney General.

13. On February 7, 2007, a true copy of the Proposed Decision of the Panel was delivered to the Respondent's attorney by personal service.

14. Neither party filed an Appeal of the Proposed Decision of the Panel within thirty (30) days of issuance pursuant to 653 IAC 25.24(2)(c).

15. Pursuant to Iowa Code sections 148.6 and 148.7 (2007) the undersigned, acting on the behalf of the Board, is authorized to enter a Final Order herein.

THEREFORE IT IS HEREBY ORDERED that the Proposed Decision of the Panel, a copy of which is attached as Exhibit A, is a **FINAL DECISION** of the Board and the Proposed Decision of the Panel is a **FINAL ORDER OF THE BOARD**.



Yasyn Lee, M.D., Chairperson
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

March 9, 2007

Date

Copy to: Theresa O'Connell Weeg, Esq., Assistant Attorney General
Respondent
Presiding Administrative Law Judge
Investigator

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	DIA NO: 06DPHMB023
STATEMENT OF CHARGES AGAINST)	CASE NO: 02-06-451
)	
)	
TOBIN E. JACKS, M.D.)	PROPOSED DECISION
)	OF THE PANEL
RESPONDENT,)	

INTRODUCTION

Date: February 6, 2007

This matter concerns a statement of charges filed by the Iowa Board of Medical Examiners (the Board) against Respondent Tobin Jacks, M.D., on June 22, 2006. Respondent was charged with three violations of the Board's regulations: 1) violation of the terms of a physician health contract with the Iowa Physician Health Program (IPHP); 2) violating a Board order; and 3) habitual intoxication or addiction to the use of drugs and alcohol. The statement of charges were subsequently amended on June 29, 2006, although the basic charges remained the same.

The case was heard by a panel of the Board on December 12, 2006, at the Board's offices in Des Moines. The following Board members were present: Dr. Susan Johnson, Dr. Yogesh Shah, and Janece Valentine. Jeffrey Farrell, an administrative law judge from the Department of Inspections and Appeals, assisted the Board. The hearing was held in closed session per Respondent's request. See Iowa Code section 272C.6(1).

Assistant Attorney General Theresa Weeg represented the public interest. The State's exhibits 1-28 were admitted into the record. The State also called Deb Anglin and Shantel Billington as witnesses.

Attorney Mike Sellers represented Respondent. Respondent testified on his own behalf. Respondent also called Dr. Richard Hauser as a witness.

After hearing the testimony and examining the exhibits, the board convened in closed executive session to deliberate their decision. See Iowa Code section 21.5(1)(f). The board directed the administrative law judge to prepare the decision in accordance with its deliberations.

FINDINGS OF FACT

Respondent has a long history of drug abuse and disciplinary actions before the Board. Respondent received his license to practice medicine on May 19, 1987. Just three months later, the Board filed a statement of charges claiming that Respondent was not capable of practicing medicine due to habitual addiction to the use of drugs. Respondent resolved the charges by entering into a settlement. He agreed to a five year license probation period, as well as a number of conditions designed to prevent future relapse. The Board dismissed Respondent from probation on October 8, 1992. (Exhibits 1-3).

On August 12, 1995, the Board filed a second statement of charges against Respondent. The document stated that local health care professionals began to suspect Respondent's relapse as soon as the middle of 1993. In 1995, Respondent voluntarily underwent a chemical dependency evaluation at the request of his local hospital administrator. The evaluation recommended that Respondent seek chemical dependency treatment at a residential facility. Respondent agreed to a new set of conditions on his license, as well as a second five year probation period. The Board dismissed Respondent from probation on June 1, 2000. (Exhibits 4-5).

On October 24, 2001, Respondent self-reported illicit drug use to IPHP. Respondent stated that he was writing prescriptions for hydrocodone under other names and diverting for his own use. Notwithstanding a pending investigation, the Board agreed not to pursue charges at the time to allow Respondent to participate in IPHP. On February 11, 2002, Respondent signed an impaired physician recovery contract. The contract required Respondent to attend approved treatment, attend approved aftercare, submit to random drug screens, and abstain from drugs and alcohol. The contract stated that IPHP could refer acts of noncompliance to the Board. (Exhibits 16, 18).

Respondent continued in the program through 2006. However, Respondent failed to provide a required UA on October 1, 2003. On November 19, 2003, IPHP notified the Board of Respondent's missed UA. (Exhibit 16).

On September 2, 2004, the Board filed a third statement of charges against Respondent. The Board alleged that Respondent: 1) inappropriately prescribed controlled substances to a co-worker, and 2) diverted controlled substances for his own use. On April 6, 2005, a panel of the Board entered a proposed

decision finding violations on both counts. The Board issued a citation and warning, ordered Respondent to verify completion of a Board-approved course in prescribing controlled substances for chronic pain, pay a \$2,000.00 civil penalty, and pay certified costs and fees arising from the contested case hearing. On September 29, 2005, the full Board affirmed the panel decision as its final order. (Exhibits 6-7).

On March 31, 2006, Respondent met with IPHP to discuss allegations that he was late following through with service requirements. The Impaired Physicians Health Committee (the Committee) voted to extend Respondent's contract by six months based on his "tardy follow through with services." Deb Anglin testified that she could not recall another occasion which IPHP extended a contract. (Exhibit 16).

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Ms. Anglin testified to an additional concern that Respondent was not fully engaged in his treatment. Ms. Anglin stated that Respondent only sought help from IPHP after being caught in relapse. (Anglin testimony).

Respondent has been in treatment with Dr. Richard Hauser since October of 2006. Dr. Hauser has a practice that specializes in treating impaired physicians. Dr. Hauser stated that Respondent has shown a positive attitude and appears committed to the program. Dr. Hauser requires Respondent to attend weekly group sessions, monthly individual sessions, and provide drug screens. Additionally, Respondent has been attending daily alcoholics anonymous (AA) meetings. Dr. Hauser reported that Respondent has been compliant with all requirements. (Hauser testimony).

Dr. Hauser stated that he believes Respondent could return to a medical practice in or around February of 2007, with conditions. Dr. Hauser recommended close monitoring, drug screens, continued

therapy, and restricting hours before allowing him to return to work. Dr. Hauser agreed that additional conditions could be imposed, such as requiring additional therapy appointments and prescribing naloxone.¹ Dr. Hauser agreed that Respondent has a long history of abuse and relapse, but stated that he has worked with other doctors who have successfully conquered addiction in similar circumstances. (Hauser testimony).

Respondent stated that he has not practiced medicine since he was admitted to in-patient treatment in April of 2006. Respondent did not deny any of the allegations, other than an allegation in one of the documents that he felt suicidal. He testified that he used his children's urine in place of his own, and manipulated one of his monitors (who was a personal friend) to abuse the screening process. (Respondent testimony).

Respondent agreed with Ms. Anglin that he did not previously invest in his recovery. Respondent testified that he treated Board or IPHP terms as a hassle, rather than look at them as a positive means to stay sober. Respondent testified that he has taken a different approach to this recovery effort. Respondent testified that he is now focused on his own recovery and health, as opposed as merely looking at the treatment as steps he must do to return to work. (Respondent testimony).

The State called Shantel Billington, a compliance and finance manager for the Board, to testify to Respondent's failure to comply with the Board's September 29, 2005, order. Respondent has not provided proof that he has attended an approved course in prescribing controlled substance for chronic pain, has not paid his \$2,000.00 fine, and has not paid the \$75.00 hearing fee. Ms. Billington wrote a letter to Respondent on January 26, 2006, in which she demanded compliance with the order. (Billington testimony; Exhibits 26-27).

Respondent claims that he did not know he had to comply with the order while he had an active appeal in district court. He acknowledged that Ms. Billington's letter put on notice that he was expected to comply. He then asked the Board for a stay. The Board denied the request on April 7, 2006. Respondent argued that he did not comply after that point because his relapse interfered with his ability to comply. (Respondent testimony; Exhibits 11-13).

¹ Naloxone is a drug that blocks the effects of opium-based drugs.

CONCLUSIONS OF LAW

Regulatory Framework: The Board is a professional examining board created to review applications for licenses and regulate the profession. See generally Iowa Code chapters 147, 148 and 272C. The Board may discipline licensees pursuant to the standards set forth in the code. See Iowa Code section 147.55 and 272C.10. The Board has adopted rules pursuant to Iowa Code chapter 17A to help define the statutory standards. See 653 IAC 24 and 25.

1. Violating the physician health contract and habitual intoxication or addiction to the use of drugs: The first and third counts are similar and will be discussed together. The Board may discipline a licensee who violates the terms of a physician health contract entered into with the Iowa Physician Health Program. Iowa Code section 272C.3(1)(k); 653 IAC 23.1(12). The Board may also discipline a licensee for habitual intoxication or addiction to the use of drugs or alcohol. Iowa Code sections 148.6(2)(h), 272C.10(4); 653 IAC 23.1(6).

Respondent admittedly violated the contract by using controlled substances, manipulating the chemical screening process, and by entering into a treatment program not approved by IPHP. Respondent has a long history of drug abuse that is amply supported by the record. He admitted the violations to IPHP and the Board during his testimony. The evidence supports a violation of both counts.

2. Violating a Board order: Count II alleges a violation for failing to comply with a lawful order of the Board in a disciplinary proceeding. Iowa Code section 148.6(2)(i); 653 IAC 23.1(11). The Board's September 29, 2005, order is clear and unmistakable. Absent a stay, he was required to abide by the order. No stay was ever entered. He has not complied with the order.

Respondent's argument that he thought he was not required to comply with the order due to his appeal is not persuasive. Respondent's subjective belief is not a factor in the violation. In any event, the record shows that he previously sought a stay on October 31, 2005, to prevent the Board from reporting the Board's order to any other agency during the pendency of his appeal. (Exhibit 8). His first stay request shows that he understood the order went into effect; otherwise, there would be no reason for him to seek that stay. This shows that he understood the Board's order was effective.

Finally, the Board is struck by the fact that Respondent has not complied with the order, even after receiving notice in the statement of charges in this case. The statement of charges was entered on June 22, 2006, but Respondent has still not satisfied any requirement of the order. Respondent did not offer any legitimate reason why he has not satisfied the order.

Sanction: The Board is authorized to impose a number of regulatory sanctions, including the ability to revoke or suspend a license, place a license on probation, and/or impose a civil penalty not to exceed \$10,000. Iowa Code sections 148.6, 148.7(7); 653 IAC 25.25(1). The Board may impose appropriate terms and conditions on a licensee who is placed on probation. The Board may consider mitigating factors, including the seriousness of the violation, the number of violations, whether remedial action has been taken, and other factors as may reflect on the competency, ethical standards and professional conduct of the licensee. 653 IAC 25.25(2).

Respondent asked the Board for authority to resume practice in or around February of 2007. There are some points in his favor. He has not practiced since April of 2006, so he has been off work for some time. He checked himself into treatment, although this fact is balanced against the fact that he did not enter an IPHP approved center. He later attended treatment with a program approved by IPHP. Respondent has been open about admitting the violations. He has complied with all programs since relapsing in April.

Still, the Board has concerns. This is Respondent's fourth statement of charges before the Board. The Board found violations on all four occasions.² All four statement of charges concerned controlled substance violation. Respondent said all the right things at the hearing. However, he has been penitent in the past, yet continued to violate the Board's statutes and regulations. At this point, the Board is not willing to take a leap of faith based on Respondent's representations alone. The Board, as the protector of the public welfare, must utilize progressive discipline to emphasize the point that Respondent cannot give lip service to the statutes and regulations. The Board must impose a sufficient sanction to command compliance.

² Additionally, the Board deferred action on one occasion while Respondent worked with the IPHP.

DECISION AND ORDER

1. CITATION AND WARNING: Respondent is hereby **CITED** for habitual intoxication or addiction to the use of drugs, violating an IPHP physician health contract and violating a Board order. Respondent is hereby **WARNED** that such conduct in the future may result in further formal disciplinary action, including revocation of his Iowa medical license.

2. CIVIL PENALTY: Respondent shall be assessed a civil penalty in the amount of **\$5,000**. The civil penalty shall be paid within twenty (20) days of the date of this Order by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

3. PROHIBITION - CONTROLLED SUBSTANCES: Respondent is indefinitely prohibited from prescribing, administering or dispensing any controlled substances. Respondent may not seek termination of this prohibition for one year after his probation period begins.

4. INDEFINITE SUSPENSION: Respondent's Iowa medical license shall be **indefinitely suspended** from the date of the Board's approval of this Order. Respondent may not seek reinstatement of his license for **at least six months** from the date of the Board's approval of this Order. Respondent shall not engage in any aspect of the practice of medicine during the period of suspension. Respondent must comply with the terms and conditions established in paragraphs (a) through (d) below before seeking reinstatement of his license. The Board must approve Respondent's compliance with each of the terms and conditions established in paragraphs (a) through (d) below before the Board will consider terminating the suspension.

5. INDEFINITE PROBATION: Upon reinstatement of Respondent's license he shall be placed on **indefinite probation** subject to the following terms and conditions:

- a) **Compliance with Prior Board Order:** Respondent shall fully comply with all requirements established in the September 29, 2005, Board Order and provide written evidence to the Board.
- b) **Monitoring Program:** Respondent shall fully comply with all requirements established in the Board's monitoring program.

- c) **Naloxone:** Respondent shall take naloxone in a dosage recommended by Dr. Hauser. Urine or blood specimens shall be screened once per month for the presence of naloxone.
- d) **Assessment with Dr. Hauser:** Prior to seeking reinstatement, Respondent shall ensure that Dr. Hauser provides an evaluation report to the Board documenting Respondent's compliance with his treatment program and offering an opinion whether Respondent is safe to return to practice.
- e) **Board-approved Work Plan:** Respondent shall submit a work plan to the Board for approval. The work plan shall include Respondent's employer(s), place(s) of employment, and describe his practice. The plan shall state the number of hours that Respondent will work.
- f) **Monitoring Program:** Respondent shall fully comply with all requirements established in his Board monitoring program.
- g) **Alcohol Prohibition:** Respondent shall not consume alcohol.
- h) **Controlled or Prescription Drug Consumption:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform all treating health care providers of his history of substance abuse prior to receiving any prescription drug.
- i) **Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide witnessed urine or blood specimens on a weekly basis. The Board shall approve all witnesses. The specimens shall be screened for alcohol and drugs. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.

- j) **Substance Abuse Meetings:** Respondent shall attend four meetings per week of Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or a similar organization that is approved by the Board. Respondent shall document his attendance in a written quarterly report to the Board. The report shall state the date, time, and location of each meeting. Each meeting shall be verified by a written signature or initials by another person in attendance at the meeting.
- k) **Substance Abuse Treatment:** Respondent shall continue Board-approved substance abuse treatment.
 - (1) The substance abuse counselor shall submit written reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
 - (2) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
 - (3) Respondent shall attend treatment as recommended by his counselor and follow all recommendations. Respondent's treatment shall include at least one weekly group session and two monthly individual sessions. Dr. Hauser shall report Respondent's compliance to the Board on a monthly basis.
- l) **Worksite Monitor:** Respondent shall submit for approval the name of a physician who regularly observes and/or supervises him at all practice locations to serve as his worksite monitor. The Board shall provide a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they agree to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, substandard treatment, or a violation of the terms of this Order. The monitor shall agree to submit quarterly reports to the Board concerning Respondent's progress. The reports shall be filed

with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

- m) **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all of the terms and conditions of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
- n) **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC .
- o) **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required by this Order. The monitoring fee shall be sent to: Shantel Billington, Monitoring Programs Coordinator, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
- p) **Costs:** Respondent is responsible for all costs relating to the terms and conditions established in this Order.

6. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

7. In the event Respondent leaves Iowa to reside or practice outside the state, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside the state of Iowa will not apply to the duration of this Order.

8. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order the Board may initiate action to suspend or revoke the Respondent's Iowa

medical license or to impose other license discipline as authorized in Iowa Code Chapters 148 and 272 and 653 IAC 25.

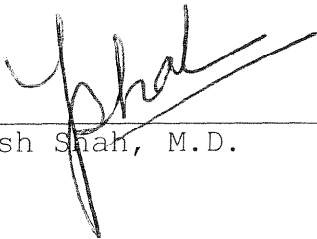
Additionally, Respondent shall pay a disciplinary hearing fee of \$75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. See 653 IAC 25.33(3). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the State of Iowa and delivered to the Board of Medical Examiners within thirty days of the issuance of the final decision.

Dated this 6th day of February, 2007.

THE PANEL:



Susan Johnson, M.D.



Yogesh Shah, M.D.



Janece Valentine

cc: Theresa O'Connell Weeg
Assistant Attorney General

Michael Sellers
Respondent's Attorney

A proposed panel decision becomes a final decision unless appealed to the board by a party adversely affected. The notice of appeal must be served on the executive director within thirty (30) days after service of this proposed decision. 653 IAC 25.31. The Board may also review a proposed decision on its own motion.

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	DIA NO: 06DPHMB023
STATEMENT OF CHARGES AGAINST)	CASE NO: 02-06-451
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TOBIN E.JACKS, M.D.)	PROPOSED DECISION
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INTRODUCTION

Date: February 6, 2007

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CONCLUSIONS OF LAW

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1. Violating the physician health contract and habitual intoxication or addiction to the use of drugs: The first and third counts are similar and will be discussed together. The Board may discipline a licensee who violates the terms of a physician health contract entered into with the Iowa Physician Health Program. Iowa Code section 272C.3(1)(k); 653 IAC 23.1(12). The Board may also discipline a licensee for habitual intoxication or addiction to the use of drugs or alcohol. Iowa Code sections 148.6(2)(h), 272C.10(4); 653 IAC 23.1(6).

Respondent admittedly violated the contract by using controlled substances, manipulating the chemical screening process, and by entering into a treatment program not approved by IPHP. Respondent has a long history of drug abuse that is amply supported by the record. He admitted the violations to IPHP and the Board during his testimony. The evidence supports a violation of both counts.

2. Violating a Board order: Count II alleges a violation for failing to comply with a lawful order of the Board in a disciplinary proceeding. Iowa Code section 148.6(2)(i); 653 IAC 23.1(11). The Board's September 29, 2005, order is clear and unmistakable. Absent a stay, he was required to abide by the order. No stay was ever entered. He has not complied with the order.

Respondent's argument that he thought he was not required to comply with the order due to his appeal is not persuasive. Respondent's subjective belief is not a factor in the violation. In any event, the record shows that he previously sought a stay on October 31, 2005, to prevent the Board from reporting the Board's order to any other agency during the pendency of his appeal. (Exhibit 8). His first stay request shows that he understood the order went into effect; otherwise, there would be no reason for him to seek that stay. This shows that he understood the Board's order was effective.

Finally, the Board is struck by the fact that Respondent has not complied with the order, even after receiving notice in the statement of charges in this case. The statement of charges was entered on June 22, 2006, but Respondent has still not satisfied any requirement of the order. Respondent did not offer any legitimate reason why he has not satisfied the order.

Sanction: The Board is authorized to impose a number of regulatory sanctions, including the ability to revoke or suspend a license, place a license on probation, and/or impose a civil penalty not to exceed \$10,000. Iowa Code sections 148.6, 148.7(7); 653 IAC 25.25(1). The Board may impose appropriate terms and conditions on a licensee who is placed on probation. The Board may consider mitigating factors, including the seriousness of the violation, the number of violations, whether remedial action has been taken, and other factors as may reflect on the competency, ethical standards and professional conduct of the licensee. 653 IAC 25.25(2).

Respondent asked the Board for authority to resume practice in or around February of 2007. There are some points in his favor. He has not practiced since April of 2006, so he has been off work for some time. He checked himself into treatment, although this fact is balanced against the fact that he did not enter an IPHP approved center. He later attended treatment with a program approved by IPHP. Respondent has been open about admitting the violations. He has complied with all programs since relapsing in April.

Still, the Board has concerns. This is Respondent's fourth statement of charges before the Board. The Board found violations on all four occasions.² All four statement of charges concerned controlled substance violation. Respondent said all the right things at the hearing. However, he has been penitent in the past, yet continued to violate the Board's statutes and regulations. At this point, the Board is not willing to take a leap of faith based on Respondent's representations alone. The Board, as the protector of the public welfare, must utilize progressive discipline to emphasize the point that Respondent cannot give lip service to the statutes and regulations. The Board must impose a sufficient sanction to command compliance.

² Additionally, the Board deferred action on one occasion while Respondent worked with the IPHP.

DECISION AND ORDER

1. CITATION AND WARNING: Respondent is hereby **CITED** for habitual intoxication or addiction to the use of drugs, violating an IPHP physician health contract and violating a Board order. Respondent is hereby **WARNED** that such conduct in the future may result in further formal disciplinary action, including revocation of his Iowa medical license.

2. CIVIL PENALTY: Respondent shall be assessed a civil penalty in the amount of **\$5,000**. The civil penalty shall be paid within twenty (20) days of the date of this Order by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund.

3. PROHIBITION - CONTROLLED SUBSTANCES: Respondent is indefinitely prohibited from prescribing, administering or dispensing any controlled substances. Respondent may not seek termination of this prohibition for one year after his probation period begins.

4. INDEFINITE SUSPENSION: Respondent's Iowa medical license shall be **indefinitely suspended** from the date of the Board's approval of this Order. Respondent may not seek reinstatement of his license for **at least six months** from the date of the Board's approval of this Order. Respondent shall not engage in any aspect of the practice of medicine during the period of suspension. Respondent must comply with the terms and conditions established in paragraphs (a) through (d) below before seeking reinstatement of his license. The Board must approve Respondent's compliance with each of the terms and conditions established in paragraphs (a) through (d) below before the Board will consider terminating the suspension.

5. INDEFINITE PROBATION: Upon reinstatement of Respondent's license he shall be placed on **indefinite probation** subject to the following terms and conditions:

- a) **Compliance with Prior Board Order:** Respondent shall fully comply with all requirements established in the September 29, 2005, Board Order and provide written evidence to the Board.
- b) **Monitoring Program:** Respondent shall fully comply with all requirements established in the Board's monitoring program.

- c) **Naloxone:** Respondent shall take naloxone in a dosage recommended by Dr. Hauser. Urine or blood specimens shall be screened once per month for the presence of naloxone.
- d) **Assessment with Dr. Hauser:** Prior to seeking reinstatement, Respondent shall ensure that Dr. Hauser provides an evaluation report to the Board documenting Respondent's compliance with his treatment program and offering an opinion whether Respondent is safe to return to practice.
- e) **Board-approved Work Plan:** Respondent shall submit a work plan to the Board for approval. The work plan shall include Respondent's employer(s), place(s) of employment, and describe his practice. The plan shall state the number of hours that Respondent will work.
- f) **Monitoring Program:** Respondent shall fully comply with all requirements established in his Board monitoring program.
- g) **Alcohol Prohibition:** Respondent shall not consume alcohol.
- h) **Controlled or Prescription Drug Consumption:** Respondent shall not use any controlled or prescription drug in any form unless the controlled or prescription drug has been prescribed for Respondent's use by another qualified treating health care provider. Respondent shall provide the Board written notice within 72 hours of the use of any controlled or prescription drug. Respondent shall inform all treating health care providers of his history of substance abuse prior to receiving any prescription drug.
- i) **Drug Screening Program:** Respondent shall fully comply with the Board's drug screening program. Respondent shall provide witnessed urine or blood specimens on a weekly basis. The Board shall approve all witnesses. The specimens shall be screened for alcohol and drugs. Respondent shall also provide random blood or urine specimens on demand by an agent of the Board. The specimens shall be used for drug and alcohol screening, all costs of which shall be paid by Respondent.

- j) **Substance Abuse Meetings:** Respondent shall attend four meetings per week of Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or a similar organization that is approved by the Board. Respondent shall document his attendance in a written quarterly report to the Board. The report shall state the date, time, and location of each meeting. Each meeting shall be verified by a written signature or initials by another person in attendance at the meeting.
- k) **Substance Abuse Treatment:** Respondent shall continue Board-approved substance abuse treatment.
 - (1) The substance abuse counselor shall submit written reports to the Board concerning Respondent's progress. The reports shall be filed with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of Respondent's probation.
 - (2) Respondent shall continue with counseling until discharged by the Board-approved counselor and until Respondent's discharge from counseling is approved by the Board.
 - (3) Respondent shall attend treatment as recommended by his counselor and follow all recommendations. Respondent's treatment shall include at least one weekly group session and two monthly individual sessions. Dr. Hauser shall report Respondent's compliance to the Board on a monthly basis.
- l) **Worksite Monitor:** Respondent shall submit for approval the name of a physician who regularly observes and/or supervises him at all practice locations to serve as his worksite monitor. The Board shall provide a copy of all Board orders relating to this matter with the worksite monitor. The worksite monitor shall provide a written statement indicating that they agree to act as the worksite monitor under the terms of this agreement. The worksite monitor shall agree to inform the Board immediately if there is evidence of substance abuse, professional misconduct, substandard treatment, or a violation of the terms of this Order. The monitor shall agree to submit quarterly reports to the Board concerning Respondent's progress. The reports shall be filed

with the Board not later than 1/20, 4/20, 7/20 and 10/20 of each year of this Order.

- m) **Quarterly Reports:** Respondent shall file sworn quarterly reports with the Board attesting to his compliance with all of the terms and conditions of this Settlement Agreement. The reports shall be filed not later than 1/10, 4/10, 7/10 and 10/10 of each year of this Order.
- n) **Board Appearances:** Respondent shall make appearances before the Board or a Board committee annually or upon request. Respondent shall be given reasonable notice of the date, time and location for the appearances. Said appearances shall be subject to the waiver provisions of 653 IAC .
- o) **Monitoring Fee:** Respondent shall make a payment of \$100 to the Board each quarter for the duration of this Order to cover the Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required by this Order. The monitoring fee shall be sent to: Shantel Billington, Monitoring Programs Coordinator, Iowa Board of Medical Examiners, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medical Examiners. The Monitoring Fee shall be considered repayment receipts as defined in Iowa Code section 8.2.
- p) **Costs:** Respondent is responsible for all costs relating to the terms and conditions established in this Order.

6. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

7. In the event Respondent leaves Iowa to reside or practice outside the state, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residence or practice outside the state of Iowa will not apply to the duration of this Order.

8. In the event Respondent violates or fails to comply with any of the terms or conditions of this Order the Board may initiate action to suspend or revoke the Respondent's Iowa

medical license or to impose other license discipline as authorized in Iowa Code Chapters 148 and 272 and 653 IAC 25.

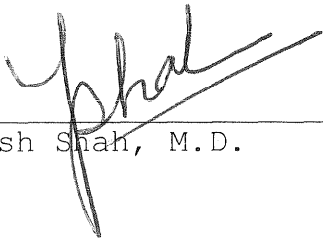
Additionally, Respondent shall pay a disciplinary hearing fee of \$75.00. Iowa Code section 272C.6(6); 653 IAC section 25.33(2). Respondent shall also pay any costs certified by the executive director. See 653 IAC 25.33(3). All sanctions, fees and costs shall be paid in the form of a check or money order payable to the State of Iowa and delivered to the Board of Medical Examiners within thirty days of the issuance of the final decision.

Dated this 6th day of February, 2007.

THE PANEL:



Susan Johnson, M.D.



Yogesh Shah, M.D.



Janece Valentine

cc: Theresa O'Connell Weeg
Assistant Attorney General

Michael Sellers
Respondent's Attorney

A proposed panel decision becomes a final decision unless appealed to the board by a party adversely affected. The notice of appeal must be served on the executive director within thirty (30) days after service of this proposed decision. 653 IAC 25.31. The Board may also review a proposed decision on its own motion.

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE)	FILE NO. 02-06-451
STATEMENT OF CHARGES)	
AGAINST)	
)	AMENDED
TOBIN E. JACKS, M.D.,)	STATEMENT OF CHARGES
)	
RESPONDENT.)	

COMES NOW the Iowa Board of Medical Examiners on June 22, 2006, and files this Notice of Hearing pursuant to Iowa Code Section 17A.12(2) (2005). Respondent was issued Iowa medical license no. 26026 on May 19, 1987. Respondent's license is active and will next expire on March 1, 2007.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing be held on August 9, 2006, before the Iowa Board of Medical Examiners. The hearing shall begin at 8:30 a.m. and shall be held in the conference room at the Iowa Board of Medical Examiners office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 12.18 to file an Answer. In that Answer, you should also state whether you request a continuance of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 12. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 12.24. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

6. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You should direct any questions to Kent M. Nebel, J.D., the Board's Legal Director at 515-281-7088 or to Assistant Attorney General Teresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

7. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

8. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 12.12.

9. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 12.28.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

10. Respondent is charged under Iowa Code section 272C.3(k) (2005) and 653 IAC sections 12.4(35) with violating the terms of a Physician Health Contract that he entered into with the Iowa Physician Health Program (IPHP).

COUNT II

11. Respondent is charged pursuant to Iowa Code section 148.6(2)(i) (2005) and 653 IAC 12.4(16) with violating a lawful order of the Board.

COUNT III

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(h) (2005) and 653 IAC sections 12.4(4) with habitual intoxication or addiction to the use of drugs or alcohol.

D. HISTORY

13. On August 31, 1987, the Board filed a Complaint and Statement of Charges against Respondent's Iowa medical license. The Board charged Respondent with habitual intoxication or addiction to the use of drugs and the inability to practice medicine with reasonable skill and safety by reason of excessive use of drugs.

14. On October 7, 1987, Respondent entered into a Settlement with the Board to resolve the pending disciplinary charges. Under the terms of the Settlement, Respondent's Iowa medical license was placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. On October 8, 1992, the Board issued an Order terminating the terms of probation placed on Respondent's Iowa medical license.

15. On August 10, 1995, Respondent and the Board entered into a combined Statement of Charges and Informal Settlement. Respondent was charged with the inability to practice medicine with reasonable skill and safety by reason of excessive use of drugs and Respondent's Iowa medical license was again placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. On June 1, 2000, the Board issued an Order terminating the terms of probation placed on Respondent's medical license.

16. On numerous occasions between January 28, 2001, and October 24, 2001, Respondent inappropriately prescribed hydrocodone, a controlled substance, to a co-worker who exhibited drug seeking behavior. Respondent failed to maintain appropriate medical records, failed to establish appropriate safeguards to prevent abuse, and failed to recognize the co-worker's drug seeking behavior. The co-worker developed a drug abuse problem.

17. On September 2, 2004, the Board charged Respondent with inappropriately diverted controlled substances he had prescribed for a co-worker, for his own use on numerous occasions in 2001.

18. On September 29, 2005, following a hearing before the Board, the Board issued a Final Order to resolve the pending disciplinary charges. Respondent was issued a Citation and Warning for engaging in improper prescribing practices and diverting the drugs for his own use. He was ordered to complete a Board-approved course for prescribing controlled substances in the treatment of chronic pain and he was ordered to pay a \$2,000 civil penalty within thirty days.

E. STATEMENT OF MATTERS ASSERTED

19. A short and plain Statement of the Matters Asserted was reviewed and approved by the Board at the time this Notice of Hearing was filed. A Statement of the Matters Asserted shall be furnished to Respondent as an attachment to this Notice. However, this short and plain statement of the matters asserted is not a public record.

F. SETTLEMENT

20. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

G. PROBABLE CAUSE FINDING

21. On this 29th day of June, 2006, the Iowa Board of Medical Examiners found probable cause to file this Notice of Hearing.

A handwritten signature in cursive script, reading "Susan R. Johnson".

Susan Johnson, M.D.
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE)	FILE NO. 02-06-451
STATEMENT OF CHARGES)	
AGAINST)	
)	
TOBIN E. JACKS, M.D.,)	STATEMENT OF CHARGES
)	
RESPONDENT.)	

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3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 12. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 12.24. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

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7. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

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9. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 12.28.

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COUNT III

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(h) (2005) and 653 IAC sections 12.4(4) with habitual intoxication or addiction to the use of drugs or alcohol.

D. STATEMENT OF MATTERS ASSERTED

13. A short and plain Statement of the Matters Asserted was reviewed and approved by the Board at the time this Notice of Hearing was filed. A Statement of the Matters Asserted shall be furnished to Respondent as an attachment to this Notice. However, this short and plain statement of the matters asserted is not a public record.

E. SETTLEMENT

14. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

15. On this 22nd day of June, 2006, the Iowa Board of Medical Examiners found probable cause to file this Notice of Hearing.



Susan Johnson, M.D.
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE)	FILE NO. 02-06-451
STATEMENT OF CHARGES)	
AGAINST)	
)	
TOBIN E. JACKS, M.D.,)	STATEMENT OF THE
)	MATTERS ASSERTED
RESPONDENT.)	(Confidential)

COMES NOW the Iowa Board of Medical Examiners on June 22, 2006, and in support of the Notice of Hearing filed in this case, sets forth the following summary of the facts which support the allegations contained in the Notice of Hearing.

1. On August 31, 1987, the Board filed a Complaint and Statement of Charges against Respondent's Iowa medical license. The Board charged Respondent with habitual intoxication or addiction to the use of drugs and the inability to practice medicine with reasonable skill and safety by reason of excessive use of drugs.

2. On October 7, 1987, Respondent entered into an Informal Settlement with the Board to resolve the pending disciplinary charges. Under the terms of the Informal Settlement, Respondent's Iowa medical license was placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. On October 8, 1992, the Board issued an Order terminating the terms of probation placed on Respondent's Iowa medical license.

3. On August 10, 1995, Respondent and the Board entered into a combined Statement of Charges and Informal Settlement. Respondent was charged with the inability to practice medicine with reasonable skill and safety by reason of excessive use of drugs and Respondent's Iowa medical license was again placed on probation for a period of five years subject to certain terms and conditions due to substance abuse. On June 1, 2000, the Board issued an Order terminating the terms of probation placed on Respondent's medical license.

4. On numerous occasions between January 28, 2001, and October 24, 2001, Respondent inappropriately prescribed hydrocodone, a controlled substance, to a co-worker who exhibited drug seeking behavior. Respondent failed to maintain appropriate medical records for the prescribing, failed to establish appropriate safeguards to prevent abuse, and failed to recognize the co-worker's drug seeking behavior. The co-worker later developed a serious drug abuse problem.

5. On September 2, 2004, the Board charged Respondent with inappropriately diverted controlled substances he had prescribed for a co-worker, for his own use on numerous occasions in 2001.

6. On September 29, 2005, following a hearing before the Board, the Board issued a Final Order to resolve the pending disciplinary charges. Respondent was issued a Citation and Warning for engaging in improper prescribing practices and diverting the drugs for his own use. He was ordered to complete a Board-approved course for prescribing controlled substances in the treatment of chronic pain and he was ordered to pay a \$2,000 civil penalty within thirty days.

7. Respondent violated the terms of the September 29, 2005, Order, when he:
 - A. Failed to complete a Board-approved course for prescribing controlled substances in the treatment of chronic pain; and
 - B. Failed to pay the \$2,000 civil penalty within thirty days.
8. On or about March 8, 2002, Respondent entered into a contract with the Iowa Physician Health Program (IPHP) for substance abuse monitoring.
9. Respondent violated the terms of his IPHP Physician Health Contract when he:
 - A. Improperly diverted controlled substances intended for his patients for his own use on more than one occasion;
 - B. Utilized urine from a patient and a member of his family to avoid detection of his use of controlled substances by a Board-approved drug screening program;
 - C. Failed to have his urine drugs screens witnessed; and
 - D. Enrolled in a non-approved drug treatment program for substance abuse.
10. On June 9, 2006, the IPHP voted to refer Respondent to the Board for disciplinary action for violating the terms of his IPHP Physician Health Contract.

On this 22nd day of June, 2006, the Iowa Board of Medical Examiners found probable cause to file this Statement of the Matters Asserted.



Susan Johnson, M.D.
Iowa Board of Medical Examiners
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686